

From: [Nicole Bealle](#)
To: [Terry Andrews](#)
Cc: monica.harris@tceq.texas.gov; [Patricia Scott](#)
Subject: RE: CES question about "RCRA Empty" tanks
Date: Monday, March 30, 2015 12:43:46 PM
Attachments: [RCRA empty memo 9-21-06.pdf](#)
[0836_001.pdf](#)
[rg-480.pdf](#)

Terry,

Please see the attached guidance information regarding 'RCRA empty' containers for TCEQ. This is the information that is used to evaluate the status of the tanks. While the guidance is good for determining if the tank is managing HW, it does not address the considerations to move the tanks and to place into service at an alternate entity. The waste status of a container for recycling/disposal is noted, at a minimum, these conditions should be met. Also, the tanks should be free of liquids (no possible/potential loss during move/transport).

Nicole

From: Terry Andrews
Sent: Monday, March 30, 2015 11:52 AM
To: Nicole Bealle
Cc: Monica Harris; Patricia Scott
Subject: CES question about "RCRA Empty" tanks

Hi Nicole,

Mickey Edmondson called me today and has a question about CES. Apparently the EPA has asked Lonestar Ecology if they want the large aboveground storage tanks located at the CES site and they are planning to transport them directly to their facility located in Pasadena. Lonestar is planning on using the tanks at their facility to treat wastewaters. These are the big tanks located in the south and north tank farms. The EPA has removed the waste from each of these tanks and pressure washed them. Mickey told me that they are considered by the EPA to be "RCRA Empty" and can be transported as is. He asked if the TCEQ has any problem with this or what would our requirements be. It seems okay to me as I don't think these tanks contain even 0.1% of anything. I'm thinking that we would need documentation that the tanks are "RCRA Empty". What do you think? Is there anyone I should notify about this? Oh, he just sent me an email that I attached.

Terry

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Beverly Hartsock, Deputy Director
Office of Policy & Regulatory Development

Date: August 5, 1998

Thru: *AMM* Ann McGinley, Director, Enforcement Division
SF Susan Ferguson, Director, Waste Policy & Regulations Division
MH Minor Hibbs, Director, Industrial & Hazardous Waste Division

From: *AR* Anne Rhyne, Enforcement Team II,
Waste Section, Enforcement Division

RECEIVED
AUG 17 1998
REGION 12

Subject: Management of Residues from Containers

The purpose of this memo is to describe the specific scenario in which a facility may receive for storage or repackaging hazardous wastes without a RCRA permit, to provide guidance on the proper manifesting of waste residues from containers, and to describe the requirements for hazardous wastes generated in a product tank. This memo is intended to be used as guidance when evaluating facilities which receive tanks or containers from off-site for cleaning or reconditioning. It is divided into three main categories: Facilities Which Receive Non-Empty Waste Containers, Facilities Which Receive Empty Waste Containers, and Facilities Which Receive Product Containers.

I. Facilities Which Receive Waste Containers and / or Tanker Trailers Which Do Not Meet the Definition of RCRA Empty:

If the containers are not empty, as defined in 40 Code of Federal Regulations (CFR) Section (§) 261.7, these facilities receive hazardous waste. These facilities often receive the containers and tankers from either the generator or a Treatment, Storage, Disposal facility (TSD), remove the waste residue or "heel" from the container, then ship the removed waste off-site. A facility operating in this manner may have to obtain a permit, unless the following procedures are followed.

A. When is the Facility Not Required to Obtain a Permit?

The facility is not required to obtain a permit if:

- 1) The facility operates as a transfer facility in compliance with 30 TEX. ADMIN. CODE § 335.94 (*Transfer Facility Requirements*) i.e., is a registered transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of § 335.65 (*Packaging*) on-site for a period of ten days or less. If the facility removes and repackages waste, then

- 2) The facility removes and repackages the waste using dry methods only, such as scraping or gravity draining. If the facility uses any solvent, including water, to remove the waste from the container, see Section I.B. of this memo.

B. When is the Facility Required to Obtain a Permit or Other Authorization?

The facility is required to obtain a permit or other authorization if:

- 1) The facility is not in compliance with 30 TEX. ADMIN. CODE § 335.2 (*Permit Required*), i.e., allows or permits any activity of unauthorized storage, processing, or disposal of any industrial solid waste or municipal hazardous waste, or
- 2) The facility operates as a transfer facility but does not comply with all provisions of 30 TEX. ADMIN. CODE § 335.94, i.e., stores hazardous waste on-site for longer periods than ten days, or
- 3) The facility uses a method to remove the waste residue which would alter the physical or chemical character or composition of the waste, such as rinsing with water or other solvents. These methods of waste removal would be considered "processing" as defined in 30 TEX. ADMIN. CODE § 335.1 (*Definitions*).

C. How Should Waste Removed from RCRA Non-Empty Containers Be Manifested?

Assuming that the originally designated TSD was not able to remove the waste from the container to meet the definition of RCRA empty, the TSD shall contact the generator to inform the generator that not enough of the contents could be removed at the TSD to meet the definition of RCRA empty, and request instructions from the generator. If the generator wishes to send the container to a transfer / tank wash facility, the TSD must make the following adjustments to the **original manifest**. Then the generator shall complete a **new manifest**. The new manifest shall accompany the RCRA non-empty container to the transfer / tank wash facility, and shall also accompany the removed waste residue as it is shipped from the transfer / tank wash facility to a destination TSD. The manifests shall be completed in the following manner:

- 1) On the **original manifest**, the TSD shall correct Section 13, *Total Quantity*, to list the actual amount of waste removed from the container at the TSD facility.
- 2) On the **original manifest**, the TSD shall fill out Section 15, *Special Handling Instructions and Additional Information*, or Section 19, *Discrepancy Indication Space* with the following information:
 - a note explaining that the entire contents of the container could not be removed;
 - the container's new destination (the transfer / tank wash facility name and associated

- TNRCC Solid Waste Registration Number); and
- the new manifest document number, so that the original manifest can be matched to the new manifest, allowing for complete "cradle-to-grave" tracking of the waste shipment.

3) The **new manifest** shall list the following information:

- the original generator as the generator of the waste;
- the transporter(s) used to transport the waste from the TSD to the transfer / tank wash facility and then to the destination TSD, in Sections 5-8, and in Sections C-F, *Transporter 1 Company Name*, etc.
- an authorized TSD (either the original TSD or another TSD) in Section 9, and in Sections G and H, *Designated Facility Name and Site Address*, etc. Note: the waste may not go back to the original generator unless the original generator is authorized to receive hazardous waste for processing, storage, or disposal;
- Before the waste is shipped from the transfer / tank wash facility, Section 12, *Number and Type of Containers*, of the new manifest shall be corrected. Example: If the new manifest which arrived at the transfer / tank wash facility listed one (1) tanker trailer containing 1,000 lbs. of waste, and the transfer / tank wash facility removed all the waste from the tanker and placed that waste in drums, the correction on the manifest as the waste leaves the facility would state five (5) drums containing 1,000 lbs. of waste.
- any necessary corrections to Section 13, *Total Quantity* and Section 14, *Unit Weight / Volume*.
- the original manifest document number in Section 15, *Special Handling Instructions and Additional Information*, or in Section 19, *Discrepancy Indication Space*, and a statement that this waste is being shipped to the transfer / tank wash site because the TSD was not able to clean the container to RCRA empty; and
- the generator's signature and the date in Section 16, *Generator's Certification*.

Note: If a transfer / tank wash facility is not able to remove the waste such that the container meets the definition of RCRA empty using dry methods only, then the transfer / tank wash facility must notify the generator and send the non-empty container to a TSD chosen by the generator. If the transfer / tank wash facility intends to solvent rinse non-empty containers, then the facility must first obtain a permit as discussed in Section I.B. of this memo.

II. Facilities Which Receive Waste Containers and / or Tanker Trailers Which are RCRA Empty:

How is the Waste Removed from an Empty Container Regulated?

If the material removed from the container was a manifested waste or is going to be disposed (including use

as a waste fuel or burning for energy recovery) it meets the definition of a solid waste. **The facility which removed the waste from the RCRA empty container or tanker would be considered the generator of this new waste.** (For wastes generated in a product tank or product transport vehicle, see Section III.A. of this memo). The November 25, 1980 Federal Register, 45 FR 78526, which added the empty container rule to 40 CFR Part 261 refers to the residues from empty containers as “unregulated residues”. Therefore, **the waste residue removed from an empty container is not subject to hazardous waste regulation under parts 261 through 265 or part 268, 270 or 124 or to the notification requirements of section 3010 of RCRA.** It is the responsibility of the generator to comply with all applicable record keeping requirements of 30 TEX. ADMIN. CODE § 335.9 for all industrial and hazardous wastes generated, including maintaining documentation to support any contentions or claims regarding the description, character, and classification of all wastes generated, stored, processed, and disposed of on-site or shipped off-site. Specifically, the generator shall document that this waste was generated from the clean out of RCRA empty container(s). The waste residue shall be managed as a nonhazardous, industrial solid waste, subject to all applicable requirements of 30 TEX. ADMIN. CODE Chapter 335. However, if any solvents were used to remove the residue from the container, or if the residue was mixed with hazardous waste, then the waste may become subject to regulation as a hazardous waste.

The residue from an empty container may be regulated as a hazardous waste in the following circumstances:

- 1) If the residue was mixed with an F-listed solvent. If the residue was removed using any solvents which, when spent, are listed in 40 CFR § 261.31 (*Hazardous wastes from non-specific sources*), during the cleaning process and the resultant waste meets the listing definition, then it is a hazardous waste.
- 2) If the residue was mixed with a listed hazardous waste. If the residue was mixed with a waste from the F, K, P, or U lists, then the resultant waste also would be a hazardous waste.
- 3) If the residue was mixed with a characteristically hazardous waste. If, instead of an F-listed solvent rinse, the residue was mixed with a material that exhibited a characteristic of a hazardous waste (the “D” waste codes), and if the resultant waste exhibits the same characteristic, then it is a hazardous waste.

Note: If the residue was mixed with uncontaminated water, the waste would not be considered characteristically hazardous. Since the residue itself was exempted from hazardous waste regulation, the residue mixed with water would not be considered hazardous.

III. Facilities Which Receive Containers and / or Tanker Trailers Which Contain Product Residues:

- A. Are Residues Removed from Product Containers Subject to the Same Requirements as Residues Removed from Waste Containers?

No. Residues from product containers may or may not be solid wastes, whereas residues from waste containers have already been determined to be solid wastes. A container which previously held product or raw material may still contain residues which are going to be removed at a transfer / tank wash facility before the container is reused. If the product removed from the container is going to be used for its intended purpose, then it would not be a *discarded* material, and therefore, would not be a solid waste, as defined in 40 CFR § 261.2(a)(1) (*Definition of solid waste*). A discarded material is any material which is abandoned, recycled, or inherently waste-like, as these terms are defined in 40 CFR § 261.2(b),(c), and (d). Product residues removed from a container may also be exempt from regulation as a solid waste under 40 CFR § 261.2(c), Table 1 or 40 CFR § 261.2(e) (*Materials that are not solid waste when recycled*.)

In addition, an exemption exists for any hazardous waste generated in certain product tanks. 40 CFR § 261.4(c) (*Hazardous wastes which are exempted from certain regulations*), states that a hazardous waste which is generated in a product or raw material storage tank, or product or raw material transport vehicle or vessel is not subject to regulation under parts 262 through 265, 268, 270, 271, and 124 until it **exits** the unit in which it was generated or unless it remains in the unit more than 90 days after the unit ceases to be operated for the manufacturing, storage, or transportation of product or raw materials. **The facility which removes this residue from the container or tanker would be considered the generator of this waste and all applicable generator requirements would apply.**

As discussed in the October 30, 1980 Federal Register, 45 FR 72024, the exemption in 40 CFR § 261.4(c) was intended for "sludges and residues" which are periodically removed through washing of the product transport vehicles and vessels. This waste, unless exempted from hazardous waste regulation under 40 CFR § 261.4(b) (*Solid wastes which are not hazardous wastes*) shall be compared to the characteristics of a hazardous waste described in 40 CFR Subpart C, and the lists of hazardous waste described in 40 CFR Subpart D. If the removed material is a waste and is not exempted from hazardous waste regulation under 40 CFR § 261.4(b) (*Solid wastes which are not hazardous wastes*), then this waste shall be compared to the characteristics of a hazardous waste described in 40 CFR Subpart C. If any solvents listed in 40 CFR § 261.31 were used to clean out the residue, this waste shall also be compared to the lists of hazardous waste described in 40 CFR Subpart D.

B. How Long Can the Residue Remain in the Container and Still Meet the Exemption?

No more than 90 days. In order to be exempted from regulation, the waste generated in a product tank or product transport vehicle must not remain in that unit more than 90 days after the unit ceases to be operated for manufacturing, storage, or transportation of product or raw materials. In addition, the October 30, 1980 Federal Register, 45 FR 72024, states, "the 90-day accumulation period starts when the hazardous waste is removed from the tank, vehicle, vessel or unit, except in the case where a tank, vehicle, vessel or unit ceases to be operated for its primary purpose, in which case the period starts when operation ceases." It is important to note that there may be two separate storage time

limits on the same residue. The residue can remain in the unit up to 90 days, then once it is removed from the unit and placed into containers, the generator may store it for an additional time period in compliance with 30 TEX. ADMIN. CODE § 335.69 (*Accumulation Time*). For example, a large quantity generator may store waste for up to 90 days, provided that all applicable provisions of § 335.69 are met. As stated in Section III.A. of this memo, the generator is the facility which removed the residue from the unit.

C. Are Facilities Which Receive Containers and / or Tanker Trailers Which Contain Product Residue Required to Obtain a Permit?

No, provided the residues do not remain in the container more than 90 days after the unit ceases to be operated for the transportation or storage of product or raw material, regardless of whether the container was stored at the transfer / tank wash facility or another location. Note: If the bulk of the product in the unit was removed at some location before the unit was transported to a transfer / tank wash facility for cleaning, it is probable that the transfer / tank wash facility will actually have less than 90 days before the waste must be removed from the unit. As soon as the facility removes the residue, the facility becomes the generator of this waste and all applicable generator requirements would apply.

This August 5, 1998 memo replaces the previous memo, also titled "Management of Residues from Containers", dated April 17, 1998.

A handwritten signature in cursive script, reading "Anne Rhyne". The signature is written in dark ink and is positioned above the typed name.

Anne Rhyne, Enforcement Team II,
Waste Section, Enforcement Division

Texas Commission on Environmental Quality

CONFIDENTIAL AND PROTECTED ATTORNEY CLIENT COMMUNICATIONS

To: Rama Yadav
Thru: Guy Henry *GH*
From: Diane Goss *D.G.*
Date: September 21, 2006
Subject: Classification of rinsate from RCRA empty containers

QUESTION PRESENTED

- 1) Is a facility that removes hazardous waste heel/residue from hazardous waste containers to make the containers RCRA empty required to have a treatment, storage, and disposal (TSD) permit?
- 2) Is rinsate from Intra Services container washing operations exempt from hazardous waste classification?
- 3) Is approximately 10,000 gallons of rinsate, stored on site by Intra Services, that tests characteristically hazardous for a toxic contaminant, 1,2-Dichloroethane, classified as hazardous waste?

SHORT ANSWER

- 1) At a minimum the facility must comport with hazardous waste transporter rules and manifest and return the waste to the initial generator within ten days. If the facility does not manifest and return the hazardous waste to the initial generator or to initial transfer, storage, or disposal facility within ten days hazardous waste generator rules apply, and a treatment, storage, and disposal (TDS) permit may be required.
- 2) No. Residue no longer remaining in RCRA empty containers is not exempt from hazardous waste classification. Rinse waters combined with hazardous waste residue constitute a new waste stream. The new waste stream is subject to hazardous waste determination and may be classified as hazardous waste.
- 3) Yes. The rinsate stored onsite by Intra Services is characteristically hazardous and may also be hazardous under the mixture rule.

DISCUSSION

I. Background

Region 12 submitted this question asking the Environmental Law Division (ELD) 1) to classify the nature of a regulated entity, Intra Services', operations, 2) for guidance in determining whether material stored onsite by Intra Services is classified as hazardous waste, and 3) to reconcile conflicting TCEQ and EPA interpretations of rules for management of residue from hazardous waste containers.

Currently, Intra Services is registered as a transfer facility, transporter, and a small quantity generator (SQG) of hazardous waste. Intra Services accepts tank truck and roll off box containers that held characteristically hazardous waste, as well as U, K, and F listed hazardous waste. Intra Services receives non-empty hazardous containers that are not properly manifested. Intra Services has no existing agreements with the initial generators of hazardous waste it receives to determine how hazardous waste will be handled and disposed of once the waste is removed from the containers. Intra Services removes the heels/residue from containers to make the containers RCRA empty.¹ After it has removed hazardous waste from containers Intra Services then contacts the initial generators of the waste to determine how the waste should be handled and disposed of. Intra Services washes the RCRA empty containers. There is conflicting information about what materials Intra Services introduces to the new waste stream (rinsate) it generates when cleaning containers that contained hazardous waste. One source at the facility states that it uses only uncontaminated water. Another source at the facility states that it uses detergents, hydrochloric acid, diesel, and steam.

Region estimates that Intra Services has accumulated and stored approximately 10,000 gallons of rinsate from hazardous waste container washing operations in a frac tank since September 2005. The facility currently labels this frac tank as unregulated material. The hazardous waste determination of this rinsate is in dispute. Analytical sample data from March 6, 2006 indicates this rinsate is characteristically hazardous for 1,2-Dichloroethane (D028) at a value of 1.34 mg/L, above the regulatory waste limit of 0.5 mg/l. Intra Services contends that this rinsate is exempt from hazardous regulation and that it does not have to make a waste determination because, when it renders containers RCRA empty, the residue in the containers no longer meets the definition of hazardous waste.

II. Analysis

TCEQ's previous guidance is out of date and has been superseded.

Intra Services relies on a 1998 TNRCC guidance memo, "Management of Residues from Containers," for its interpretation of TAC § 335.41 and 40 CFR § 261.7. This memo states that residue removed from RCRA empty containers is exempt from regulation, and classifies waste residue generated from cleaning RCRA empty containers as nonhazardous industrial solid

¹ 40 C.F.R. § 261.7 (2005) (defining empty hazardous waste containers and exempting from classification as hazardous waste, residues that remain inside these, so called, "RCRA empty" hazardous waste containers.

waste.² The memo also states that residue from RCRA empty containers mixed with uncontaminated water escape characteristically hazardous waste determination, because residue that is exempt from hazardous waste regulation is not rendered hazardous by mixing with water.³ TCEQ's interpretation contradicts EPA's more recent interpretation of the "Residues of hazardous waste in empty containers" rule.

Residue, once removed from a RCRA empty container, is no longer exempt from hazardous waste classification.

EPA clarified its interpretation of the RCRA empty container rule in a 2004 guidance memo.⁴ EPA's interpretation focuses on the phrase "remaining in an empty container."⁵ EPA contends that residue removed from a RCRA empty container no longer meets the exemption for "residue remaining in an RCRA empty container."⁶ EPA classifies rinsate, comprised of nonexempt hazardous waste residue and solid waste rinse waters, as a new waste stream subject to full regulation under RCRA.⁷

Even though rinse water from an "empty" container may be non-hazardous, 261.7 does not exempt rinse water because rinse water is not a waste "remaining in" an "empty" container. When residue is removed from an empty container the residue is subject to full regulation under Subtitle C if the removal or subsequent management of it generates a new hazardous waste exhibiting any characteristics identified in Part 261, Subpart C.⁸

TCEQ should adopt EPA's interpretation of rules pertaining to management of residue removed from empty containers.

Under its delegated authority from EPA, TCEQ must enact and enforce regulations that are, at a minimum, as protective of human health and the environment as those promulgated by EPA.⁹ TCEQ adopted RCRA empty container provisions at TAC 335.41 using verbatim language from EPA Residues of Wastes in Empty Containers rule at 40 CFR § 261.7. State regulations that adopt EPA regulations verbatim must be interpreted at a minimum as stringently as the federal

² Memorandum from Anne Rhyne, Enforcement Team II, Waste Section Enforcement Division, Texas Natural Resource Conservation Commission, to Beverly Hartstock, Deputy Director Office of Policy & Regulatory Development, Texas Natural Resource Conservation Commission on Management of Residues from Containers (August 5, 1998).

³ *Id.*

⁴ Memorandum from Robert Springer, Director of Office of Solid Waste, Environmental Protection Agency, to Casey Coles, Hogan and Hartson, L.L.P. *Policy on the Management of Rinsate from Empty Containers*, April 12, 2004) available at <<http://yosemite.epa.gov/osw/5Crcra.nsf/SearchAll?SearchView&Query=Field+TempFaxBack+contains+14708>>

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Memorandum from Mathew Hale, Director, Office of Solid Waste, Environmental Protection Agency, to RCRA Directors, Regions I-X, *Determining Equivalency of State RCRA Hazardous Waste Programs* (September 7, 2005) available at <<http://www.epa.gov/epaoswer/hazwaste/state/index.htm>> RCRA State Authorization.

regulations.¹⁰ TCEQ should adopt EPA's contemporary interpretation of 40 CFR § 261.7, and classify residues no longer remaining in RCRA empty containers as hazardous waste. In doing so, TCEQ will comply with the letter and the spirit of the law. A plain reading of the rule supports EPA's interpretation and is consistent with TCEQ's mandate to "protect human health and the environment from the potential hazards of waste disposal."¹¹

Rinsate is solid waste that is subject to hazardous waste determination.

Rinsate is solid waste because it is a discarded material that does not meet any exclusion.¹² Solid waste is hazardous waste if it exhibits hazardous characteristics above regulatory thresholds and does not qualify for exclusion.¹³ The EPA toxicity characteristic list includes 1,2-Dichloroethane at a level at or above 0.5 mg/l.¹⁴ Solid waste may be hazardous under the mixture rule. The mixture rule states that waste resulting from the mixture of a solid waste with a listed hazardous waste is hazardous waste.¹⁵ Solid waste may be hazardous under the "derived from" rule. The "derived from" rule states that solid waste generated from disposal, storage, or treatment of a listed hazardous waste becomes a listed hazardous waste.¹⁶ Intra Services has commingled rinsate from cleaning operations of containers that held F, K, and U listed hazardous waste, with rinsate from cleaning operations of containers that held characteristically hazardous waste.¹⁷

Intra Services generates multiple waste streams of hazardous waste.

Intra Services meets the definition of a generator of a new waste stream of solid waste because when it removes exempt residue from a RCRA empty container its act first causes that residue to become regulated as solid waste.¹⁸ When Intra Services removes residue from non empty hazardous waste containers in order to render the containers RCRA empty, and does not ship the hazardous waste within ten days, it assumes the status of generator of the new hazardous waste stream and generator regulations apply.¹⁹ The sources, types, and amounts of waste residues Intra Services cleans from containers and the cleaning agents it utilizes varies. Intra Services accumulates rinsate containing varying constituents, from a variety of containers cleaned, in batches. LQGs and SQGs must make a hazardous waste determination, label, count, handle, accumulate, and dispose of hazardous waste in accordance with regulations.²⁰ Intra Services must make a waste determination for each batch of waste it generates.

¹⁰ *Id.*

¹¹ 42 C.F.R. Chapter 82 § 6902(a)(4) (2005)(listing the objectives of national policy in solid waste disposal).

¹² 30 TEX. ADMIN. CODE § 335.1 (134)(A) (2004).

¹³ *Id.* at (62).

¹⁴ 40 C.F.R. § 261.24(b) (2005).

¹⁵ 40 C.F.R. § 261.3(a)(2)(iv) (2005).

¹⁶ *Id.* at (c)(2).

¹⁷ *Id.* at (b)(2).

¹⁸ 30 TEX. ADMIN. CODE § 335.1 (58)(defining generator as one "whose act or process produces a solid waste or first causes it to become regulated").

¹⁹ 30 TEX. ADMIN. CODE §§ 335.61(d), 335.94 (2004).

²⁰ 30 TEX. ADMIN. CODE §§ 335.62–335.73, 335.504 (2004).

Intra Service is not a small quantity generator of hazardous waste.

Intra Services is not exempt from permit requirements because it does not meet SQG requirements. An SQG may generate greater than 100 Kg but less than 1000 Kg of hazardous waste per month.²¹ When a facility generates greater than or equal to 1000 Kg of hazardous waste per month the facility does not meet the definition of an SQG.²² Generators must accurately count hazardous waste generated by the facility each month.²³ Intra Services offers no records to demonstrate that the facility counts the quantity of hazardous waste it generates per month. Region 12 estimates the volume of hazardous waste stored on site by Intra Services to be at least 10,000 gallons. For comparison, 10,000 gallons of water weighs 37,800 Kg. Presumptively, Intra Services has generated more than the SQG regulatory allowable amount of 1000 Kg of hazardous waste per month. The amount of hazardous waste accumulated by an SQG may never exceed 6000 Kg.²⁴ Intra Services has exceeded the maximum SQG accumulation limits.

Intra Services is a large quantity generator of hazardous waste.

When Intra Services generates greater than or equal to 1000 Kg of hazardous waste per month or accumulates excess of 6000 Kg of hazardous waste at one time it is an LQG.²⁵ An LQG that accumulates hazardous waste for more than 90 days may not operate without a TSD permit.²⁶

Intra Services accumulates and stores hazardous waste in excess of TCEQ regulations.

When a generator exceeds regulatory accumulation time limits for hazardous waste, the mechanism of containment (i.e. drum, frac tank, roll-off box, sump, etc.) is deemed storage, and the facility must obtain a TSD permit.²⁷ Intra Services offers no records to demonstrate compliance with hazardous waste accumulation limits. Hazardous waste stored onsite by Intra Services has been accumulated for over 10 months. Presumptively, Intra Services has exceeded regulatory SQG time limit of 180 days to 270 days for accumulation of hazardous waste on site.²⁸ Thus, Intra Services accumulation of hazardous waste is deemed storage of hazardous waste. An SQG may accumulate a maximum of 6000 Kg of non-acute hazardous waste for a maximum of 180 days, or 270 days if the waste is shipped a distance of 200 miles or greater.²⁹ A large quantity generator (LQG) has a shorter accumulation limit of 90 days.³⁰ Intra has stored hazardous waste on site for over 240 days. Presumptively, Intra Services has exceeded regulatory time limits for on site hazardous waste storage.³¹

²¹ 30 TEX. ADMIN. CODE § 335.69(f) (2004).

²² *Id.*

²³ 30 TEX. ADMIN. CODE § 335.9 (2004).

²⁴ 30 TEX. ADMIN. CODE § 335.69(f)(1) (2004).

²⁵ *Id.* at (a), (f).

²⁶ *Id.* at (l).

²⁷ *Id.* at (b), (h).

²⁸ 30 TEX. ADMIN. CODE § 335.69(h) (2004).

²⁹ *Id.* at (f).

³⁰ *Id.* at (a).

³¹ *Id.* at (b).

Intra Services' registrations do not exempt the facility from TSD permit requirements.

Intra Services contends that the facility's operations are exempt because it is a registered transporter and transfer facility. A transporter that stores hazardous waste must obtain a TSD permit.³² When Intra Services removes residue from non empty hazardous waste containers in order to render the containers RCRA empty, manifests, and returns the hazardous waste to the original generator within ten days, these operations may be in compliance with the facility's transfer facility and transporter registrations.³³ However, when Intra Services does not return the hazardous waste to the generator within ten days, transporter status no longer applies and the facility is managing hazardous waste without a TSD permit.³⁴ Under present practice, Intra Services accepts non-empty hazardous waste containers that are not properly manifested. Intra Services should have a rejection policy in place to handle any containers that the facility is incapable of or unauthorized to manage.

Rinsate stored on site by Intra Services is hazardous waste.

Approximately 10,000 gallons of Rinsate stored on site by Intra Services waste is not exempt from hazardous waste determination, is characteristically hazardous for a toxicity characteristic above regulatory thresholds, and may also be hazardous under mixture rule. The exact volume of rinsate is unknown but Region 12 estimates the volume to be at least 10,000 gallons.

III. Conclusion:

Intra Services is managing hazardous waste without a permit.

Residues removed from RCRA empty containers are not excluded from the definition of hazardous waste. Rinsate consisting of residue rinsed from RCRA empty containers combined with rinsing agents constitutes a new waste stream. This new waste stream meets the definition of a hazardous waste if the rinsing agent that is a listed hazardous waste or if the rinsate is characteristically hazardous. The rinsate stored on site by Intra Services is solid waste that is characteristically hazardous. Intra Services has violated TCEQ rules because it has generated, accumulated, and stored hazardous waste in excess of regulatory limits. Intra Services' current practices subject it to the permitting requirements for owners and operators of hazardous waste storage, processing, or disposal facilities.

³² 30 TEX. ADMIN. CODE § 335.91(d)(2004).

³³ 30 TEX. ADMIN. CODE § 335.94 (2004).

³⁴ 30 TEX. ADMIN. CODE §§ 335.2, 335.94 (2004).



Common Questions on Empty Waste Containers

What is a container?

Title 30 Texas Administrative Code, Subsection 335.1 (28), Title 40 Code of Federal Regulations, Part 260, Section 260.10

A container is any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled. This definition is intentionally broad to encompass all types of portable devices that may be used to handle waste. Examples of containers include a 5-gallon bucket, a 55-gallon drum, a tanker truck, or any number of other portable devices.

What is a “RCRA empty” container?

30 TAC 335.41(f), 40 CFR 261.7

(RCRA is the acronym for Resource Conservation and Recovery Act.)

A container is considered RCRA empty according to this description: After you have removed the contents using common practices (pouring, pumping, and aspirating) and it can't be emptied any further, the container holds less than one inch (2.5 centimeters) of residue. Containers that stored hazardous waste but do not meet the RCRA-empty definition are considered hazardous waste.

Does the size of the container matter?

30 TAC 335.41(f)(2)(A)(iii), 40 CFR 261.7(b)(1)

Yes, the size of the container does factor into the definition of RCRA empty.

Table: Container size affects RCRA-empty status

If the container capacity is...	The maximum allowed residue remaining in the container is...
119 gallons or less	1 inch (2.5 centimeters) or 3% by weight of the total capacity of the container or inner liner
More than 119 gallons	1 inch (2.5 centimeters) or 0.3% by weight of the total capacity of the container or inner liner

What if my container is an aerosol can?

335.41(f)(2)(B), 40 CFR 261.7(b)(2)

A container that stored a hazardous waste defined as a compressed gas is considered empty when the pressure in the container approaches atmospheric pressure.

What if the container stored an acutely hazardous material?

30 TAC 335.41 (f)(2)(C), 40 CFR 261.7(b)(3)

A container, including an inner liner removed from it, that stored an acutely hazardous waste listed in **40 CFR 261.31, 261.32, or 261.33(e)** is empty if:

- A. the container or inner liner was triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate; **or**
- B. the container or inner liner was cleaned using a method that removes the material at an equivalent level as shown by scientific literature or tests conducted by the waste generator; **or**
- C. in the case of a container, the inner liner, which prevented contact between the commercial chemical product or manufacturing chemical intermediate and the container, was removed.

As an industrial solid waste generator, are there additional classification requirements for my RCRA-empty containers?

30 TAC 335.508 (2), 40 CFR 302

Yes, RCRA-empty containers from an industrial generator must be classified as a Class 1 industrial solid waste* if they previously stored a:

- hazardous substance,
- hazardous waste,
- Class 1 industrial solid waste, or
- material that would be classified as a hazardous or Class 1 industrial solid waste if disposed.

An industrial solid waste generator is located at an industrial facility and is defined as “Any business engaged in making a product for wholesale according to an organized plan and with a division of labor, changing the materials by processing them, or substantially supporting either of these activities.” If the business is involved in these types of industrial activities, all wastes produced are considered industrial solid waste, even the office trash.

A hazardous substance is defined in 40 CFR Part 302. Note that some of the hazardous substances it identifies may not be classified as hazardous or Class 1 industrial solid waste if disposed (for example, some aluminum, ammonium, sodium, ferric, and zinc compounds).

* For further information on industrial generators and industrial solid waste classification, go to the last section of this document titled “What if I have more questions?”

What options do industrial solid waste generators have?

30 TAC 335.508 (2) and 513, 40 CFR 302.4

You do have the option of classifying the RCRA-empty containers as Class 2 industrial solid waste if they meet one of the following criteria:

Option 1. The container capacity is 5 gallons or less; **or**

Option 2. The container previously stored a Class 2 industrial solid waste;
or

Option 3. The container is an aerosol can that was depleted of its contents, such that the inner pressure of the can equals the atmospheric pressure, and the minimal residue remains in the can; **or**

Option 4. The container capacity is more than 5 gallons and meets both of the following conditions:

- The residue is completely removed either by triple rinsing with a solvent capable of removing the waste, by hydro-blasting, or by other methods.
- The container was crushed, punctured, or subjected to other mechanical treatment that renders it unusable.

Option 5. The container will be recycled and meets all of the following conditions:

- The residue was completely removed either by triple rinsing with a solvent capable of removing the waste, by hydro blasting, or by other methods.
- The container is not regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 40 CFR Part 165.
- The generator maintains documentation, according to 30 TAC 335.513 Documentation Required, that demonstrates the container is being recycled; and
- The recycling activity involves shredding, dismantling, scrapping, melting, or other method that renders the container unusable.

Again, some hazardous substances identified in 40 CFR 302 Designation, Reportable Quantities, and Notification may not be classified as hazardous or Class 1 industrial solid waste if disposed (some aluminum, ammonium, sodium, ferric, and zinc compounds).

How should I store my empty containers?

As a best-management practice, you should mark or label the containers as empty, keep the lids closed, and protect them from the inclement weather conditions in a manner that does not create a nuisance. Rain and snow can collect inside containers and potentially become a waste that will be costly to dispose.

How should I manage or dispose of my RCRA-empty containers?

Depending on how the empty containers are classified, there are different management and disposal options including the following:

- Send them to a person who reclaims the containers' scrap value.
- Send them to someone who reconditions or remanufactures them.
- Send them to an approved disposal facility.

Should I record my RCRA-empty containers on a manifest?

30 TAC 335.10, 335.24, and 335.508; 40 CFR 262.20

It depends on how you classify them. If they meet the conditions of RCRA-empty containers, they are not considered hazardous waste and may be exempt from the manifest requirement. Although the manifesting requirements may not apply, Department of Transportation shipping requirements may still be applicable during transport.

If you are an industrial solid waste generator, a registration and manifest may be required since RCRA-empty containers can be Class 1 industrial solid waste.

Unless the TCEQ executive director determines otherwise, manifesting is not required **if the containers are non-industrial solid wastes and** are nonhazardous recyclable materials, recyclable materials listed under 30 TAC 335.24 (**see** Requirements For Recyclable Materials and Nonhazardous Recyclable Materials), and legitimately being recycled.

Must I list RCRA-empty containers on my Notice of Registration?

30 TAC 335.6, 335.502, and 335.508

Since RCRA-empty containers are not considered hazardous waste they may be exempt from being listed on a Notice of Registration. If you are a registered industrial and hazardous waste facility and are classifying the containers as a Class 1 or Class 2 industrial solid waste, then you must list them on the notice.

How do I handle the rinsate or residue generated by cleaning my container or inner liner?

Residue from a container that stored a hazardous waste, and the rinsate or the solution remaining after rinsing a container or inner liner, are regulated as a waste. This newly generated waste must be evaluated when it is generated to determine if it is a hazardous waste according to 30 TAC 335.1. If the container or inner liner held a listed hazardous waste, then the rinsate or residue also may be a listed hazardous waste and therefore must be properly classified. If the container or inner liner held an acutely hazardous listed waste, then the rinsate from triple rinsing them also may be an acutely hazardous listed waste and may be regulated as such.

Can I send my containers to be recycled as scrap metal?

30 TAC 335.17, 40 CFR 261.4(a)(13)

A facility can recycle its empty scrap-metal containers using a legitimate metal recycler through an exemption under 40 CFR 261.4(a)(13) (see Excluded scrap metal...being recycled.) If claiming the exemption, the generator must ensure the recycler collects any residual or rinsate after the metal drums are crushed.

The TCEQ RENEW program is a materials-exchange network listing companies that may want your used empty containers. For more information, visit the RENEW website at <www.renewtx.org>.

Can empty containers go to a landfill?

30 TAC 330.3, 335.171, 335.173

Once meeting all legal requirements, you may dispose of empty containers through a drum disposal company, by placing them in a dumpster going to a landfill, or by taking them to a local transfer station that accepts them.

Before placing them in the garbage or taking them to a landfill consider the quantity, size, and type of material they contained and contact the landfill office for its disposal requirements. The facility may not accept empty containers or containers with free-liquid waste inside them. If the landfill accepts them, it may require you to get an authorization.

Empty containers may be regulated as special waste if they are classified as a municipal hazardous waste from a conditionally exempt small-quantity generator, or if they are a Class 1 nonhazardous industrial waste.

If possible, try to reuse or recycle your empty containers.

What if I have more questions?

Contact the TCEQ Small Business and Local Government Assistance Section at 1-800-447-2827 or visit our website at <texasenvirohelp.org> and click on the “Waste Designation Decision Matrix” link, or review TCEQ guidance documents, such as RG-234 Industrial and Hazardous Waste: Rules and Regulations for Small-Quantity Generators and RG-022 Guidelines for the Classification and Coding of Industrial and Hazardous Wastes.

Copies of publications mentioned in this guidance document can be obtained from TCEQ Publications at 512-239-0028, or online at <www.tceq.state.tx.us/publications>.

You can find the official version of TCEQ rules in the Texas Administrative Code on the Secretary of State’s website, <www.sos.state.tx.us>. For your convenience, the TCEQ website provides **unofficial** versions of the rules, in PDF, at <www.tceq.state.tx.us/goto/rules>.